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200 HIGH POINT ROAD-PH2
HARTSDALE, NY 10530

EXAMINER

MITCHELL, TEENA KAY

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 06/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/822,606

Applicant(s)

GASCHKE, PAUL

Examiner

Teena Mitchell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 32-39 is/are allowed.
- 6) ☒ Claim(s) 27, 28, 30 and 31 is/are rejected.
- 7) ☒ Claim(s) 29 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 April 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Species C (Fig. 9C) claims 27, 31, 32, 33, 36, and 38 in the reply filed on 01/05/04 and resubmitted on 04/04/04 is acknowledged.

Specification

The disclosure is objected to because of the following informalities: The front and rear wall have not been specifically disclosed in the specification, thereby making it unclear as to what applicant in the claim 36 is making reference to (i.e, what constitutes the front and rear walls of the member, such has also not been clearly depicted in the drawings).

Correction is required.

Claim Objections

Claims 36 and 37 are objected to because of the following informalities: Inasmuch as the specification does not detail a front and rear wall and the drawings have not specifically detailed what elements depict the front and rear walls; claim 36 is not clear as to what/where the front and rear wall are located (inasmuch as claim 37 depends from claim 36 it therefore is also objected to). Correction is required.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the front and rear wall (while applicant may suggest that these elements are present, the examiner does not know what elements actually represent the front and rear wall, as no reference in the

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disclosure to such elements has been noted) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 27, 28, 30, and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Conkle (1,139,850).

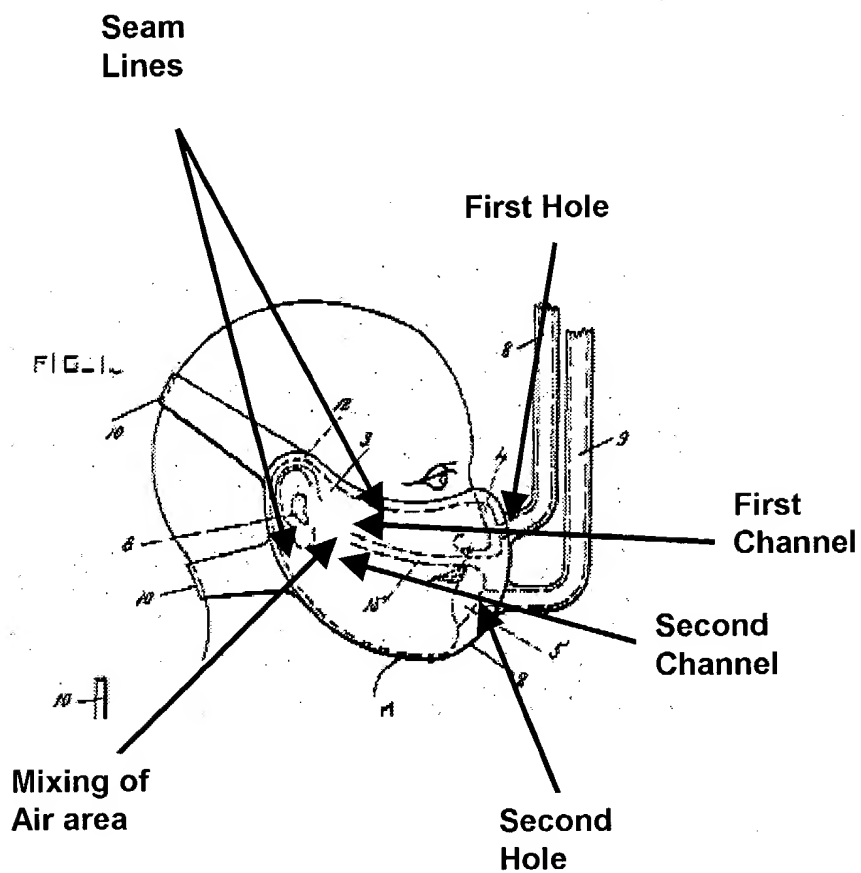
Conkle in a mask discloses:

- a garment (2) adapted and configured to fit over a portion of a user's face;
- a first member (4) defining a first hole (see illustration of Fig. 1 below) in fluid communication with the nostrils of the user and a first channel (see illustration of Fig. 1 below) adapted and configured for accepting air flowing from the first hole, the first channel diverting the air laterally from the nostrils (see illustration of Fig. 1 below; inasmuch as air flows from the nostrils of the user and hits element 15, this thereby causing a lateral diverting of air from the nostrils), said first member being attached to said garment (2, note seam lines illustrated in Fig. 1 below); and
- a second member (5) defining a second hole (see illustration of Fig. 1 below) in fluid communication with the mouth of the user and a second channel (see illustration of Fig. 1 below) adapted and configured for accepting air flowing from the second, said second member being attached to said garment (2, note seam lines in Fig. 1 below);
- wherein a portion of the first channel is received within the second channel, and the air from the nostrils mixes with the air from the mouth in the second channel (see illustration of Fig. 1 below; inasmuch as air flows from the nostrils and mouth when the user breaths, this creates a flow of air from the

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nostrils and mouth which would meet in the area depicted below illustrated in

Fig. 1 below).



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With respect to claim 28, Conkle discloses wherein the second channel is adapted and configured to divert the air laterally from the mouth (inasmuch as air leaves the mouth of the user and hits element 15 this creates a diverting of air laterally from the mouth) and said second member (5) defines at least one exhaust port (via 9) for exhausting the nostril air and mouth air to ambient.

With respect to claim 30, Conkle discloses wherein said first member (4) includes a barrier (15) adapted and configured to direct air exhausted from one nostril to flow within the first channel (see illustration of Fig. 1 above) in front of the other nostril (inasmuch as when the user breaths out air via a nostril the air hits element 15 and therefore would divert flow within the first channel in front of the other nostril, by the movement of the air out of one nostril hitting element 15 some of the air would flow in front of the other nostril).

With respect to claim 31, Conkle discloses a garment (2) adapted and configured to fit over a portion of a user's face (Fig. 1); a first member defining a first hole (see illustration of Fig. 1 above) in fluid communication with the nostrils of the user and a first channel (see illustration of Fig. 1 above) adapted and configured for accepting air flowing from the first hole, the first channel diverting the air laterally from the nostrils (see illustration of Fig. 1 above), said first member including a barrier (15) adapted and configured to direct air exhausted from one nostril to flow within the first channel (see illustration of Fig. 1 above) in front of the other nostril (inasmuch as when the user breaths out air via a nostril the air hits element 15 and therefore would divert flow within the first channel in front of the other nostril, by the movement of the air out of one nostril

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hitting element 15 some of the air would flow in front of the other nostril), said first member being attached to said garment (see seam lines depicted above with respect to illustration of Fig. 1); and a second member (see illustration of Fig. 1 above) defining a second hole (see illustration of Fig. 1 above) in fluid communication with the mouth of the user and a second channel (see illustration of Fig. 1 above) adapted and configured for accepting air flowing from the second hole, said second member being attached to said garment (see seam lines depicted above with respect to Fig. 1).

Allowable Subject Matter

Claims 32-39 are allowable over the prior art of record. (However, the objections to claims 36 and 37, along with the drawing objections must be addressed, as the specification and drawings must be clear as to what/where the front and rear wall are suppose to be).

Claim 29 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The overall combination of the garment with the limitations of the independent claims and wherein the first member is repeatedly separable from the second channel and repeatedly receivable with the second channel; a second separable member defining a hole, a third hole, and a flow channel in fluid communication with the second hole and the third hole; the third hole spaced laterally from the second hole, the third hole being in fluid communication with the second channel and ambient; the member

including a front wall and a rear wall, the front wall separating the second channel from ambient conditions in front of the user's mouth, the rear wall at least partly separating the second channel from the garment; said member defining a third hole spaced laterally from the first hole and the second hole, the third hole being in fluid communication with the first channel, the second channel, and ambient, said member including an internal baffle that diverts downward ambient air flowing into the third hole, through the first channel, and into the first hole to minimize the direct flow of air from the third hole over the nostrils of the user the limitations are neither anticipated nor rendered obvious by the prior art of record.

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The balance of art is cited to show apparatus for covering a portion of a user's face: 6,371,116; 5,595,174; Des. 369,442; 5,551,087; 5,460,174; 5,018,519; 4,458,679; 4,300,240; 2,452,845; 2,238,492; 838,434.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teena Mitchell whose telephone number is (703) 308-4016. The examiner can normally be reached on Monday-Friday during normal business hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (703) 308-0101. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Teena Mitchell
Examiner
Art Unit 3743
June 7, 2004